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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 88 OF
THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Case Reference: LON/00BK/LCP/2012/0007

Premises: 18 & 19 LOWNDES SQUARE
LONDON SW1X 9HB

Applicant: 18 & 19 LOWNDES SQUARE LIMITED

Representative: BRICE DROOGLEEVER & CO (Solicitors)

Respondent: 18 & 19 LOWNDES SQUARE RTM COMPANY
LIMITED

Representative: MAXWELL WINWARD LLP (Solicitors)

Date of Receipt of Application: 23rd February 2012

Date of Directions 27th February 2012

Appearance for Applicant(s):

Appearance for Respondent(s):

Leasehold Valuation Tribunal: Mr S. Shaw LLB (Hons) MCI Arb

Date of Paper Determination 1st May 2012

Date of Decision: 4th May 2012

DECISION

Introduction

1. This case involves an application received by the Tribunal on 27th February 2012 made by 18 & 19 Lowndes Square Limited (“the Applicant”). The Respondent to the application is 18 & 19 Lowndes Square RTM Company Limited (“the Respondent”) which, as its name suggests is the right to manage company which has been formed under the provisions of the Act.
2. The statutory notice claiming the right to manage was dated 21st September 2010 and by counter notice dated 4th October 2010 the claim was admitted. However between 21st September 2010 and 27th January 2012 significant costs have been generated between the parties and it is those costs which are the subject of the dispute, and which constitute the dispute in this application. The Applicant claims costs and disbursements totalling £8,217.33p inclusive of VAT. The Respondent disputes those costs.
3. Directions were given by the Tribunal in this costs dispute on 27th February 2012. As a result of those Directions, the Applicant has prepared a bundle of documents running to 40 pages containing the Applicant’s Statement of Case dated 8th March 2012, the Respondent’s Statement of Case with the Respondent’s Points of Dispute dated 27th March 2012, and the Schedule of the Applicant’s costs as prepared by a costs draftsman. In addition, although not part of that bundle, the Applicant has also lodged with the Tribunal a

Supplementary Reply in accordance with paragraph 7 of the Directions, which Reply is dated 30th March 2012.

4. The guidance given to the Tribunal in assessing costs in a case of this kind is as set out by the Respondent in its Statement of Case at paragraph 3. At paragraph 3 section 88 of the Act is set out, specifically section 88(1) – and in summary this provides that the RTM company (the Respondent) is liable for reasonable costs incurred by the Applicant landlord in consequence of the claim of the right to manage, as initiated by the claim notice dated 20th September 2010. There is a costs cap in section 88(2) in respect of professional services which are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by the landlord, if the circumstances had been such that he was personally liable for all such costs.

5. In addition there is some guidance to be found in the Solicitors (Non-Contentious Business) Remuneration Order 2009 (SI2009/1931). Article 3 of that order is set out at paragraph 7(c) of the Respondent's submission and several criteria are there listed in deciding what costs are fair and reasonable, having regard to all the circumstances of the case. As noted by the Respondent at paragraph 8, there is a certain degree of latitude and subjectivity inevitably in making this assessment and the Tribunal accepts what is said at paragraph 8(e) of the Respondent's submission to the effect that: *"It is not the function of the Tribunal to carry out a detailed assessment of each item of the*

costs. It should carry out a summary assessment which involves a broad brush approach in resolving the dispute...".

6. As indicated, in this case a sum of £8,217.33p is claimed. No alternative figure is put forward on behalf of the Respondent but there is a detailed schedule containing the Respondent's points of dispute in respect of the Applicant's Schedule of Costs. The Tribunal has considered this in detail and it seems that the sums admitted by the Respondent would come to in the order of £1,500 to £2,000.
7. Many of the items disputed by the Respondent are on the basis that letters or correspondence generated by the Applicant for which charges have been made do not arise in consequence of the claim notice, and/or are either wholly or in part related to day to day management work, which the Applicant should expect to pay managing agents to carry out. The disputed element is not always clear from the Respondent's points of dispute. In addition there seems to be a substantial dispute about whether or not the correspondence and time spent in dealing with an argument about insurance (see items 24, 25, 26, 27 and 54 in the Bill of Costs) was legitimately incurred or whether it resulted from a misconceived contention on the part of the Respondent. To this extent it seems to the Tribunal that advice was taken by Counsel and the point being taken on behalf of or by the Respondent was indeed misconceived.
8. It is inevitable that cases of this kind will have to be dealt with on the suggested "broad brush" approach. The sum claimed is indeed high although not so high

as to be in excess of some others seen by the Tribunal. This particular case appears to have generated more than the usual volume of correspondence and time and as is often the case it seems to the Tribunal that the fair quantum is somewhere between that contended for on behalf of the Respondent and that advanced by the Applicant. It does seem to the Tribunal that an element of these costs may not be directly the consequence of the claim notice served, but nonetheless substantial costs have been legitimately incurred. The Tribunal sees nothing unreasonable about the charging rate of £300 per hour for the legal services provided, nor the fees charged for letters as set out in the Bill of Costs.

9. Doing the best it can on the material before it and after having taken into account the submissions on both sides the Tribunal determines that the reasonable sum under the Act and applying the principles of both the Act and the guidance referred to above is £4,250 in respect of the legal costs exclusive of VAT. The deduction is made on the basis that there is some limited force in the Respondent's contention that an element has been claimed which is not directly consequentially upon the Claim Notice (for the more detailed reasons given in the Points of Dispute), and further that an element of the correspondence could have been more condensed. The disbursements which have been charged (specifically Counsel's fees and the cost of the Costs Draftsman in preparing the Bill of Costs totalling £330 and £482.26 respectively, inclusive of VAT) seem to the Tribunal to be reasonable and recoverable. Accordingly, the sum determined by the Tribunal as recoverable for the purposes of section 88 of the Act is £4,250 plus VAT in respect of the legal

costs and £812.26, inclusive of VAT, in respect of the disbursements. The grand total therefore is £5912.26 inclusive of VAT, which is the sum determined by the Tribunal as being reasonable and recoverable in this case.

Legal Chairman: S. Shaw

Dated: 4th May 2012